

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2773 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

MANUBHAI M PATEL

Versus

CHIMANLAL LABHSHANKAR VAIDYA

Appearance:

MR JITENDRA M PATEL for Petitioner

None present for Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 11/02/98

ORAL JUDGEMENT

1. Challenge has been made by the petitioner by this special civil application to the order of the Deputy Collector, Vadodara dated 19-6-1984 and the order of the State Government dated 6-3-1986 under which the earlier order has been confirmed.

2. The dispute pertains to the agricultural land situated at Village-Amla, Taluka-Padra bearing survey

Nos.924/1, 143 and 342. Under the impugned orders, the authorities have held that the petitioner is in unauthorised occupation of the aforesaid land and under section 9 (3) of the Bombay Prevention of Fragmentation and consolidation of Holdings Act, 1947 (hereinafter referred to as 'the Act, 1947'), he was ordered to be evicted and the possession was ordered to be delivered to the respondent No.1.

3. The learned counsel for the petitioner made three fold contentions challenging the legality, validity and correctness of the orders impugned in this special civil application, which are as follows:

- (i) notice under section 6(2) of the Act, 1947 was not served on the owner of the land i.e. the respondent No.1. So there is no breach of section 7 of the said Act in the present case;
- (ii) the action should have been taken for eviction of the petitioner from the land in dispute within reasonable time. The proper legal inquiry has not been made by the Deputy Collector in the present case, and as such, both the orders vitiate; and
- (iii) lastly, it is contended that the petitioner has given Rs.5000/- to the respondent No.1 as loan to take the possession of the land and in case the land has to be reverted back to the respondent No.1, the order should have been passed for refund of Rs.5000/- to him together with interest.

4. After making the submissions, the learned counsel for the petitioner made a statement before this Court that he does not press the third submission made by him. So it is not necessary for this Court to go and decide this third contention.

5. In support of his first contention, the learned counsel for the petitioner placed reliance on the decision of this Court in the case of Harijan Parbhubhai Makanbhai vs. Joint Special Secretary reported in 1994 (1) GCD 794.

Re : Contention NO.1

6. Section 6 (2) of the Act, 1947, makes a provision that the notice of fragmentation of the land has to be given to the owner and only in case, after this notice,

the land is transferred then there may be a case of violation of section 7 of the Act, 1947. That is the law, which has been laid down by this Court in the case on which reliance has been placed by the counsel for the petitioner. However, it is a question of fact - whether the notice under section 6 (2) of the Act, 1947 has been given to the landlord or not. It appears that the petitioner raised the contention before the authorities below that notice under section 6 (2) of the Act, 1947 has not been given to the owner but he has not produced any evidence whatsoever. What the learned counsel for the petitioner contended that it was the burden of the State Government or the Officer dealing with the matter to set this issue or the respondent No.1 should have proved that the notice has been given. I fail to see any justification in this contention. When the petitioner has come up with the case that notice under section 6 (2) of the Act, 1947 has not been given to the owner of the land then the burden lies upon him and he has to prove it by producing the material evidence on the record.

7. The learned counsel for the petitioner admitted that the respondent No.1 has not admitted this fact that notice under the aforesaid provision has not been given to him. He also fairly admits that neither of the authorities have recorded the finding that the notice under section 6 (2) of the Act, 1947 has not been given to the owner, and lastly, he admits that the petitioner has not produced any evidence good, bad or indifferent on this issue. In view of the fact that the petitioner though raised this material question but has not produced any evidence and further that it is not the admitted case of the respondent No.1 that he has not been given the notice under section 6 (2) of the Act, 1947, and further that none of the authorities have recorded any finding that the notice was not given to the respondent No.1, this contention is devoid of any substance.

Re: Contention No.2

8. It is the case where the proceedings have been initiated on the application of the respondent No.1. The respondent No.1 has filed a civil suit for recovery of the possession of the land and ultimately, that suit appears to have been withdrawn under the legal advice and this application has been filed. In view of this fact, it cannot be said that there is delay in taking of the action by the Deputy Collector. The learned counsel for the petitioner, on being asked by the Court, is unable to give when the suit has been filed by the respondent No.1

in the Civil Court against the petitioner for recovery of the possession. In view of this fact, it cannot be said that the action has been taken after considerable delay.

9. In the result, this special civil application fails and the same is dismissed. Rule discharged. Interim relief, if any, granted by this Court stands vacated.

zgs/-